

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1113
Economic Matters

(Delegate Kramer, *et al.*)

Finance

Commercial Sale of Dogs and Cats - Prohibited Acts (Companion Animal
Welfare Act)

This bill generally prohibits a person from “offering for sale” a dog or a cat at any public place. The prohibition does not apply to (1) an “animal welfare organization” or animal control unit under specified circumstances or (2) a dog breeder and a specific individual purchaser conducting a prearranged sale of a dog if the location of the prearranged sale is not at a regularly scheduled or recurring event. A person who violates this provision is subject to a civil penalty of up to a \$500 fine for a first violation and enhanced fines for a second or subsequent violation. Moreover, a retail pet store may only offer a dog or cat for sale if the animal is obtained from specified entities. A violation of this provision is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil (but *not* criminal) penalty provisions. The bill alters the entities to which retail pet store laws do not apply.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: The bill’s imposition of new and existing penalty provisions does not have a material effect on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Local governments can enforce the bill’s provisions related to the sale of dogs and cats in public places with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Sales in Public Places Generally Prohibited, Subject to Limited Exclusions

Generally, a person may not offer for sale a dog or a cat at any public place. “Offer for sale” includes to sell, offer to transfer, offer for adoption, advertise for the sale, barter, auction, giveaway, or otherwise dispose of a domestic animal. An “animal welfare organization” is a not-for-profit organization established to promote animal welfare that has tax-exempt status under the U.S. Internal Revenue Code.

A person who violates this provision is subject to a civil penalty of up to a \$500 fine for a first offense, up to a \$1,000 fine for a second offense, and up to a \$1,500 fine for a third or subsequent offense.

Sale of Dog or Cat by Retail Pet Store

A retail pet store may offer a dog or cat for sale only if the dog or cat is obtained from:

- an animal welfare organization;
- an animal control unit; or
- the original breeder of the animal – or a dealer that obtained the animal from the original breeder – if, as of the day the retail pet store receives the dog or cat, the retail pet store ensures that each such person holds a current license from the U.S. Department of Agriculture (USDA) and meets other specified requirements.

A violation of this provision is an unfair or deceptive trade practice under MCPA, subject to MCPA’s civil penalty provisions (but *not* criminal penalty provisions).

A retail pet store must maintain required records for two years, rather than only one year as under current law. The records must also be made available to an animal control unit, in addition to the entities specified in current law.

Under the bill, provisions relating to retail pet stores do *not* apply to an animal welfare organization or an animal control unit operating within a retail pet store, whereas under current law, the provisions do not apply to a bona fide nonprofit organization operating within a retail pet store.

The bill also makes technical and conforming changes to existing recordkeeping and disclosure provisions for retail pet stores that sell dogs.

Current Law: In general, a dog or cat younger than eight weeks of age may not be sold or distributed in the State unless it is accompanied by its female parent. Chapters 214 and 215 of 2012 established conditions and requirements for remedy when a dog sold at a retail pet store is found to have an undisclosed disease, illness, or prior condition. It also established certification, recordkeeping, and public disclosure requirements for retail pet stores that conduct business in the State, as well as penalties for noncompliance. A violation is an unfair or deceptive trade practice under MCPA, subject to MCPA's civil and criminal penalty provisions.

Sale of Dogs by Retail Pet Stores

Retail pet stores that sell dogs in the State must keep detailed written records for each dog held in the store's possession. Information that must be maintained includes:

- the breed, age, and birth date of the dog, if known;
- the gender, color, and any identifying markings of the dog;
- documentation and specific details pertaining to all inoculations, worming treatments, and other medical treatments;
- the name and address of the breeder or dealer who supplied the dog, the facility where the dog was born, and the transporter or carrier of the dog, if any;
- USDA license number of the breeder or dealer, if required;
- any identifier information, including a tag, tattoo, collar number, or microchip; and
- if the dog is being sold as registered or registrable, the names and registration number of the sire and dam and the litter number.

A dog's records must be kept for at least one year after the date of sale of the dog.

Health Certification Requirements at Retail Pet Stores

A retail pet store must provide a health certificate from a State-licensed veterinarian, issued within 30 days before the date of sale, to a purchaser at the time of a sale of a dog. The certificate must state that the dog (1) has no known disease, illness, or congenital or hereditary condition that is diagnosable with reasonable accuracy and (2) does not appear to be clinically ill from parasitic infection at the time of the examination.

A person who has purchased a dog from a retail pet store is entitled to a remedy under certain conditions related to the health of the dog. A person entitled to a remedy may

(1) return the dog to the retail pet store for a full refund of the purchase price; (2) exchange the dog for another dog of comparable value chosen by the purchaser, if available; or (3) retain the dog and be reimbursed by the retail pet store for reasonable and documented veterinary fees, not exceeding the purchase price of the dog.

Inspection of Dog Businesses

To determine if dogs are being treated inhumanely in violation of any law, an authorized director of a humane society, accompanied by a sheriff or a deputy sheriff, with prior written notice, may inspect premises (1) where a person is engaged in the business of buying, selling, trading, or breeding dogs or (2) of a kennel where 25 or more dogs are kept. These premises inspection provisions do not apply to premises:

- where dogs are kept or bred solely for medical or related research or laboratory tests;
- operated by a licensed and regularly practicing veterinarian; or
- where hunting dogs are housed, if the buying, selling, trading, or breeding is incidental to the main purposes of housing, keeping, and using dogs.

Kennel License for Dog Breeders

Chapter 297 of 2011 requires a person to obtain a kennel license if (1) the person owns or has custody of 15 or more unspayed female dogs over six months old; (2) the dogs are kept for the purpose of breeding and selling their offspring; and (3) the person sells dogs from six or more litters per year.

Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each

subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: The federal AWA of 1966 regulates certain animal activities, including commercial dog and cat breeding. AWA defines the minimum standards of care for dogs, cats, and certain other species of animals bred for commercial resale and exhibition. It also requires that certain commercial breeders be licensed and routinely inspected by USDA. A Class A license is issued under AWA for animal dealers who sell animals that are bred and raised at their facility.

Many dogs sold as pets in the United States are bred in commercial dog-breeding facilities that mass-produce dogs for sale to pet stores (often called puppy mills). Substandard conditions are commonly reported at these facilities. Similar types of operations exist for other animals kept as pets or used as feed for other animals. Due to the frequently poor breeding conditions, puppies bred by commercial breeders can be ill-tempered and may suffer from poor health. As of June 2014, approximately 21 states had enacted laws that provide specific recourse for the purchaser of a sick or diseased animal from a retail pet store.

Small Business Effect: There is a meaningful impact for small businesses in the State due to the prohibition against the sale of certain dogs and cats by retail pet stores. These businesses are likely small businesses and must conform to the bill's requirements that the dogs and cats sold be from specific sources and that records be maintained for an additional year.

Additional Information

Prior Introductions: None.

Cross File: SB 663 (Senator Benson, *et al.*) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Department of Agriculture; Department of State Police; Montgomery, Washington, and Worcester counties; U.S. Department of Agriculture; American Veterinary Medical Association; Department of Legislative Services

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